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TO ATTORNEY GENERAL GONZALES FROM CHARGE DICKSON

E.O. 12958: N/A

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SUBJECT: CANADA: ATTORNEY GENERAL GONZALES' MAY 18 VISIT

TO OTTAWA

¶1. (SBU) As you prepare for your first meeting with Canada's Deputy Prime Minister Anne McLellan and Minister of Justice Irwin Cotler, I want to extend my welcome and offer the Embassy's continuing support for the range of issues, initiatives, and processes that form the core of the Department of Justice's interests and programs in Canada. At a time when Washington, Ottawa, and indeed Mexico City, are formulating ideas to advance North America's collective prosperity and security, your visit underscores the importance we place on open and forward-leaning collaboration with Ottawa. The Cross Border Crime Forum is a prime example of this U.S. and Canadian collaboration and your visit, even during troubled political times in Canada, underscores our commitment to this process.

¶2. (SBU) You come to Ottawa at a very "interesting" time politically. At this point it is unclear how long - or if - the minority Government led by Prime Minister Paul Martin can remain in office without a new national election. Stephen Harper, leader of the Official Opposition Conservative Party, is committed to bringing down the Liberal Government and forcing an election as soon as possible, and he is very close to having the votes to win a no confidence vote, now scheduled for May 19.

¶3. (SBU) This uncertainty does spill over into the law enforcement arena, and you will undoubtedly hear of Justice Minister Cotler's stalled attempt to advance additional anti-human trafficking legislation, an issue of concern he and your predecessor shared. Still, even in the present unsettled atmosphere, your visit can reinforce the absolute necessity for official Americans and official Canadians to push forward on our common law enforcement objectives. This is nowhere more evident than in your confirmation that the Cross Border Crime Forum shall continue to be the driving mechanism that gives voice to our Justice-to-Justice dialogue, a road map that continues to serve us so well.

¶4. (SBU) Regardless of party affiliation, most Canadians understand that prosperity, safety and well-being of our two societies are linked. Most Canadians appreciate the threat posed by would-be terrorists and increasingly by organized and violent criminals. While many don't feel Canada is itself a primary target for terrorists, they realize that an open and free-flowing border with the U.S. is vital to their economic prosperity. This understanding has given us leverage as we pursue our law enforcement/justice goals in Canada. Indeed, your predecessor's quiet but firm commitment to law enforcement was heard loud and clear throughout Ottawa.

¶5. (SBU) The working relationships among the Ministries of Justice and Public Safety and Emergency Preparedness and your Department of Justice are professional and productive. The warm welcome you receive from Deputy Prime Minister McLellan and Minister Cotler is genuine and reflects the exemplary working relationship on justice and law enforcement issues that has existed for years. Both have stated that they want this relationship to continue and expand. To further our agenda, we suggest you raise the following issues with your Canadian counterparts that the Mission sees as 'fixable' stumbling blocks to even better cooperation. They are:

Canada's Privacy Concerns

¶6. (SBU) There is growing concern among certain consumer and union groups in Canada about the privacy effects of certain elements of the Patriot Act, primarily Section 215. In November 2004, following objections public employee unions in British Columbia to the contracting out of health claim processing to a U.S. firm, the BC Privacy Commissioner issued a report that raised concerns but characterized the risks as manageable through additional contractual safeguards. The Federal Privacy Commissioner has undertaken a review of the issues raised in BC and the federal Treasury Board has asked federal agencies to review their contracting and report back on any potential issues.

¶7. (SBU) While Canadian government experts believe that

Patriot Act procedures are not incompatible with Canadian privacy legislation, which is more operationally flexible than that of the European Union, the government feels increasing pressure to address the issue. They suggest exchanging views and information on a range of privacy-related topics in a low-key, non-confrontational manner, rather than focusing on the Patriot Act. We suggest that you reassure your interlocutors that the U.S., too, has addressed and is committed to privacy issues.

Production Orders

18. (SBU) U.S. and Canadian counter-terrorism and counter-crime efforts could result in more successful deterrents, arrests, and prosecutions if U.S. and Canadian law enforcement authorities could draw from better harmonization of legal provisions, methodologies and operational standards. For instance, Canada's "probable cause to believe" and signed court order requirements are more difficult for Canadian law enforcement officials to meet than the "reasonable suspicion" standard used in the U.S. As a result, Canadian law enforcement officials tell us that they are unable to secure warrants against individuals police believe have conspired or are conspiring to commit criminal and terrorist acts. Presently, domestic legislation has passed in Canada (March 2004) that allows for production orders, but it has not been implemented for lack of a clear evidentiary standard. Therefore, it would help if you were to suggest to Ministers McLellan and Cotler that they push for a process that compels evidence more expeditiously on a "reasonable suspicion" standard. You may even want to reinforce the ongoing discussions in the law enforcement working group of President Bush's Security and Prosperity Partnership as an ideal channel to discuss this issue.

Law Enforcement Partnership

19. (SBU) Our working level contacts at the Ministry of Justice have told us that Canada may soon formalize a shiprider protocol with the United States that would allow U.S. Coast Guard vessels with Royal Canadian Mounted Police (RCMP) officers on board to conduct interdiction patrols in Canadian waters of the Great Lakes. Our hope is that a shiprider protocol may serve as a stepping-stone to more routine U.S. and Canadian law enforcement joint operations along our contiguous land and sea frontier. For instance, we would welcome the expansion of the already successful Integrated Border Enforcement Team (IBET) program to include joint (vs. the current parallel) patrols, and the addition of overflight and landing provisions for IBET air components. We would hope you could find the opportunity to endorse a US-Canadian shiprider protocol as an important law enforcement interdiction program.

10. (SBU) Your interlocutors might also query you on the status of Title 19. The absence of a carriage-of-arms reciprocal agreement between the U.S. and Canada has been a stumbling bloc to more effective IBET deployments since the inception of the program. The U.S. passed amendments to Title 19 in February 2003, and DHS has initiated implementation procedures to allow for the cross-designation of foreign law enforcement officers as Customs Officers in the United States. Canada has stated that it would be amenable to offer U.S. law enforcement officers Title-19-like authorities and exemptions, but will not do so until the apparent impasse in Washington is clarified and overcome. Whether or not the Canadians raise Title 19, the Mission contends that our ability to support effective law enforcement work in Canada requires our officials have the authority to carry arms. We would your support in securing Title 19-like protections here in Canada. In the meantime, should they ask, you might respond that you support this legislation.

11. (SBU) And, finally, your hosts may raise the US "Special 301" report criticizing Canada's intellectual property rights (IPR) regime and enforcement mechanisms. RCMP and local police officers are jointly responsible for IPR enforcement inside Canada. U.S. (and many Canadian) companies have complained that Canada's enforcement regime against counterfeiting and piracy, both at the border and internally, is cumbersome and ineffective, requiring civil court orders before goods can be formally seized. RCMP representatives say they are emphasizing training and streamlining procedures and have had a couple of highly publicized seizures in recent months. The IPR enforcement issue has been on the agenda at both the Cross-Border Crime Forum and in the Security and Prosperity Partnership, and the US Trade Representative has committed to an "out-of-cycle" review of Canada's legal framework and enforcement procedures. Canadian officials dislike and reject the US "Special 301" process but say that enforcement is receiving more attention as issues of public

safety, e.g., imports of counterfeit pharmaceuticals, come to the fore. Indeed, the safety issues surrounding pirated household electronic items are frequently raised by Deputy Minister McLellan. During your meetings, you may want to underscore the U.S. commitment to getting these hazards off the streets and out of our homes.

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